

2. This dispute arises out of the design and construction of the Property and the alleged failure to design and/or construct the Property in accordance with the FHA, specifically 42 U.S.C. § 3604.²

RESPONSE:

3. Defendant BNA Investments, GP (hereinafter, “BNA”) was the original record owner of the Property.³

RESPONSE:

4. BNA transferred its interest in the Property to Blue Hills Holdings, LLC (hereinafter, “Blue Hills”) on or about March 30, 2020.⁴

RESPONSE:

5. Blue Hills retained Elmington Property Management, LLC (hereinafter, “Elmington”), which was the sole entity responsible for the operation, management, and marketing of the Property beginning on April 1, 2021 through July 29, 2022.⁵

RESPONSE:

² Pls.’ Original Compl. [Doc. 1] ¶¶ 32-43.

³ Def. BNA Investments, GP’s Resp. to Pls.’ Interrog. 3 [Attached to this Statement of Undisputed Material Facts as Exhibit A] at 3.

⁴ Def. BNA Investments, GP’s Resp. to Pls.’ Interrog. 3 [Ex. A] at 3.

⁵ Affidavit of Catherine Neal (hereinafter, the “Neal Aff.”) [Attached to this Statement of Undisputed Material Facts as Exhibit B] ¶¶ 4, 9; *see also* Property Management Agreement [Neal Aff. at Ex. A].

6. The Property opened for operations in July 2021.⁶

RESPONSE:

7. As manager for the Property, Elmington was responsible for creating, collecting, and maintaining financial reports, operating reports, and other records related to the management of the Property.⁷

RESPONSE:

8. As manager for the Property, Elmington was also responsible for the lease-up of the Property, including marketing rental units to the public, reviewing tenant applications, filling vacant units, collecting rent, handling tenant relations, coordinating the move-in process, and negotiating renewals and extensions of leases.⁸

RESPONSE:

9. Throughout the course of the lease-up for the Property, Elmington's site team at the Property created and maintained Rent Roll Reports, which set forth the occupancy status, tenant names, move-in dates, lease start dates, lease end dates, and market rent for each unit within the Property.⁹

⁶ Neal Aff. ¶ 10.

⁷ Neal Aff. ¶ 6.

⁸ Neal Aff. ¶ 7.

⁹ Neal Aff. ¶ 8; *see also* Neal Aff. at Ex. B-D.

RESPONSE:

10. The Rent Roll Reports were included in the Monthly Financial and Operating Reports for the Property that Elmington transmitted to the owner of the Property each month, beginning when the Property opened in July 2021.¹⁰

RESPONSE:

11. The August 2021 Rent Rolls, October 2021 Rent Rolls, and the February 2022 Rent Rolls were made and kept in the course of the regularly conducted activity of Elmington as part of its duties and obligations as the property manager for the Property during the timeframe when these reports were made.¹¹

RESPONSE:

12. The August 2021 Rent Rolls, the October 2021 Rent Rolls, and the February 2022 Rent Rolls were created on August 28, 2021, October 27, 2021, and February 28, 2022, respectively, by Elmington team members with knowledge of the details contained on each report.¹²

RESPONSE:

¹⁰ Neal Aff. ¶ 10.

¹¹ Neal Aff. ¶ 15; *see also* Neal Aff. at Ex. B-D.

¹² Neal Aff. ¶ 16.

13. As detailed on the Rent Roll Reports, Unit 101, the last unoccupied individual apartment unit within the Property that was made available for rent was occupied by a tenant on January 10, 2022.¹³

RESPONSE:

14. Plaintiff Cynthia George alleges that she visited the Property on May 26, 2023 and February 22, 2024.¹⁴

RESPONSE:

15. Plaintiff Chelsie Nitschke alleges that she visited the Property on February 22, 2024.¹⁵

RESPONSE:

16. The Plaintiffs' Original Complaint [Doc. 1] was originally filed by the Plaintiffs on February 27, 2024, commencing this civil action.¹⁶

RESPONSE:

¹³ Neal Aff. ¶ 17; Neal Aff. at Ex. B-D.

¹⁴ Pl. Cynthia George Resp. to Def. Bacar Constructors, Inc.'s Interrog. No. 2, [Attached to this Statement of Undisputed Material Facts as Exhibit C] at 6.

¹⁵ Pl. Chelsie Nitschke Resp. to Def. Bacar Constructors, Inc.'s Interrog. No. 2, [Attached to this Statement of Undisputed Material Facts as Exhibit D] at 6.

¹⁶ *See generally*, Pls.' Original Complaint [Doc. 1].

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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